

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

CURTIS L. DOWNING,)	
)	
Plaintiff,)	2:12-cv-00332-JCM-CWH
)	
vs.)	
)	ORDER
JOHNNIE GRAVES, <i>et al.</i> ,)	
)	
Defendants.)	
	/	

Plaintiff, who is a prisoner in the custody of the Nevada Department of Corrections, has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983 and has filed an application to proceed *in forma pauperis*.

I. *In Forma Pauperis* Applications (ECF No. 1, 2, 4, 5)

Before the court is plaintiff's application and amended applications to proceed *in forma pauperis*. Based on the information submitted regarding plaintiff's financial status, the court finds that plaintiff is not able to pay an initial installment payment towards the full filing fee pursuant to 28 U.S.C. § 1915. Plaintiff will, however, be required to make monthly payments towards the full \$350.00 filing fee when he has funds available.

1 **II. Motion to Supplement Complaint (ECF No. 6)**

2 Plaintiff has submitted a motion to amend or supplement his civil rights complaint with
 3 additional defendants and additional claims. (ECF No. 6). Attached to plaintiff's motion is
 4 plaintiff's sworn affidavit, which contains plaintiff's allegations against two new defendants,
 5 correctional officers J. Meranza and R. Hill. (ECF No. 6, at pp. 4-8). Plaintiff also submits an
 6 affidavit containing the same allegations against defendant Meranza and Hill, signed by plaintiff and
 7 several other inmates. (ECF No. 6, at pp. 9-13). Plaintiff asserts that the actions of defendants
 8 Meranza and Hill were consistent with the allegations of the complaint, in that plaintiff alleges that
 9 correctional staff have retaliated against him because he assists other inmates with filing inmate
 10 grievances or legal actions. The court grants plaintiff's motion to supplement the complaint and
 11 construes plaintiff's affidavit concerning correctional officers Meranza and Hill as a supplement to
 12 the complaint. *See* Fed. R. Civ. P. 15(d). The clerk of court is directed to detach and file plaintiff's
 13 affidavit (ECF No. 6, at pp. 4-8), which shall be construed as the supplement to the complaint.

14 **III. Screening Standards**

15 Federal courts must conduct a preliminary screening in any case in which a prisoner seeks
 16 redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. §
 17 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that
 18 are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary
 19 relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1),(2). *Pro se*
 20 pleadings, however, must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d. 696,
 21 699 (9th Cir. 1988). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
 22 elements: (1) that a right secured by the Constitution or laws of the United States was violated, and
 23 (2) that the alleged violation was committed by a person acting under color of state law. *See West v.*
 24 *Atkins*, 487 U.S. 42, 48 (1988).

25 In addition to the screening requirements under § 1915A, pursuant to the Prison Litigation
 26 Reform Act of 1995 (PLRA), a federal court must dismiss a prisoner's claim, "if the allegation of

1 poverty is untrue,” or if the action “is frivolous or malicious, fails to state a claim on which relief
2 may be granted, or seeks monetary relief against a defendant who is immune from such relief.” 28
3 U.S.C. § 1915(e)(2). Dismissal of a complaint for failure to state a claim upon which relief can be
4 granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and the court applies the same
5 standard under § 1915 when reviewing the adequacy of a complaint or an amended complaint.
6 When a court dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend
7 the complaint with directions as to curing its deficiencies, unless it is clear from the face of the
8 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70
9 F.3d 1103, 1106 (9th Cir. 1995).

10 Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v.*
11 *Laboratory Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to state a
12 claim is proper only if it is clear that the plaintiff cannot prove any set of facts in support of the claim
13 that would entitle him or her to relief. *See Morley v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999). In
14 making this determination, the court takes as true all allegations of material fact stated in the
15 complaint, and the court construes them in the light most favorable to the plaintiff. *See Warshaw v.*
16 *Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996). Allegations of a *pro se* complainant are held to less
17 stringent standards than formal pleadings drafted by lawyers. *See Hughes v. Rowe*, 449 U.S. 5, 9
18 (1980); *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). While the standard under Rule
19 12(b)(6) does not require detailed factual allegations, a plaintiff must provide more than mere labels
20 and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A formulaic recitation
21 of the elements of a cause of action is insufficient. *Id.*; *see Papasan v. Allain*, 478 U.S. 265, 286
22 (1986).

23 Additionally, a reviewing court should “begin by identifying pleadings [allegations] that,
24 because they are no more than mere conclusions, are not entitled to the assumption of truth.”
25 *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). “While legal conclusions can provide the framework of
26 a complaint, they must be supported with factual allegations.” *Id.* “When there are well-pleaded

1 factual allegations, a court should assume their veracity and then determine whether they plausibly
 2 give rise to an entitlement to relief.” *Id.* “Determining whether a complaint states a plausible claim
 3 for relief [is] a context-specific task that requires the reviewing court to draw on its judicial
 4 experience and common sense.” *Id.*

5 Finally, all or part of a complaint filed by a prisoner may therefore be dismissed *sua sponte* if
 6 the prisoner’s claims lack an arguable basis either in law or in fact. This includes claims based on
 7 legal conclusions that are untenable (e.g., claims against defendants who are immune from suit or
 8 claims of infringement of a legal interest which clearly does not exist), as well as claims based on
 9 fanciful factual allegations (e.g., fantastic or delusional scenarios). *See Neitzke v. Williams*, 490 U.S.
 10 319, 327-28 (1989); *see also McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

11 **IV. Screening of the Complaint and Supplement**

12 Plaintiff brings action against the following persons: Johnnie T. Graves, correctional
 13 investigator; Lee Griggs, correctional sergeant; Brian Williams, warden; James Cox, director of
 14 corrections; Bryan Wilson, correctional officer; Cheryl Burson, associate warden; Jerry Howell,
 15 associate warden; Frank Dreesen, associate warden; Brian Connett, assistant director; Rashonda
 16 Smith, law library supervisor; Howard Skolnik, former director of corrections; Sheryl Foster,
 17 assistant director of operations; A. Romero, correctional officer; R. Woodbury, correctional officer;
 18 Brian Sandoval, Governor of Nevada; Ross Miller, Secretary of State; Catherine Cortez-Masto,
 19 Attorney General of Nevada; and Doe defendants. In the supplement, plaintiff brings action against
 20 J. Meranza and R. Hill, both correctional officers. Plaintiff claims that defendants violated his
 21 constitutional rights during his incarceration at the Southern Desert Correctional Center. Plaintiff
 22 seeks declaratory, injunctive, and monetary relief against defendants.

23 **A. Nature of the Case Statement**

24 In the section of the complaint entitled “nature of the case,” plaintiff alleges six “issues”
 25 which he incorporates by reference into the individual counts of the complaint. (Compl., at ¶¶ 25-
 26 107; pp. 7-24). The court summarizes plaintiff’s six issues, as follows:

1 **1. First Issue**

2 As the first issue, plaintiff alleges that on March 1, 2010, defendant Graves wrote a false
3 disciplinary charge accusing him of charging legal fees for performing legal service for other
4 inmates, a violation of prison regulations. Plaintiff alleges that defendant Graves was well aware of
5 his activity of assisting other inmates with their legal pursuits, and the false charge against plaintiff
6 was an effort to dissuade him from engaging in this activity. Plaintiff alleges that defendant Griggs
7 conducted his disciplinary hearing on March 23, 2010, that he was found guilty of the charge, and
8 that he was sanctioned 120 days in disciplinary segregation. Plaintiff's appeals of the disciplinary
9 finding of guilt were denied by defendants Williams and Cox. Plaintiff alleges that the conditions of
10 disciplinary segregation were dramatically different from the typical prison conditions in general
11 population. Plaintiff alleges that he spent 120 days in disciplinary segregation, subject to the
12 following conditions: (1) birds flying throughout the unit dropping feces; (2) cold and inadequate
13 meals; (3) deprivation of store privileges to purchase supplement food items, resulting in an
14 unbalanced diet, hunger, and substantial weight loss; (4) insect infested cell; (5) no cleaning supplies
15 to clean his cell; (6) reduced phone time and reduced time out of his cell; and (7) insufficient water
16 during outside recreation; (8) deprivation of his personal appliances and electricity to his cell; and (9)
17 cold showers. Plaintiff alleges that the entire incident has made him apprehensive about assisting
18 other inmates with their legal pursuits. (Compl., at ¶¶ 25-40; pp. 7-10).

19 **2. Second Issue**

20 As the second issue, plaintiff alleges that on September 14, 2010, he headed to the SDCC law
21 library for his regular appointment to conduct legal research, in an effort to assist other inmates with
22 their legal pursuits. Plaintiff alleges that he was in possession of his own legal materials, as well as
23 the legal materials of those inmates whom he was assisting. Plaintiff was stopped by defendant
24 Wilson, whom plaintiff describes as "well-aware of plaintiff's reputation as a so-called 'jailhouse
25 lawyer.'" Defendant Wilson inspected the papers that plaintiff carried and told plaintiff that he was
26 not supposed to be in possession of other prisoners' legal documents without their permission.

1 Plaintiff attempted to explain to defendant Wilson that he had the inmates' verbal permission to be
2 in possession of their legal documents. Still, defendant Wilson confiscated the legal materials, and
3 plaintiff alleges that in doing so, defendant Wilson hindered his ability to assist other prisoners with
4 their legal work. Plaintiff told defendant Wilson that he was submitting a grievance against him that
5 same day regarding the incident, which he in fact filed on September 14, 2010 and on September 16,
6 2010. On September 16, 2010, plaintiff was served with a notice of charges (fees for legal service
7 and unauthorized contact) which had been written by defendant Wilson. Plaintiff asserts that Wilson
8 wrote the notice of charges in retaliation for plaintiff having filed a grievance against Wilson, for
9 having "proved defendant Wilson wrong" regarding AR 722, and as a means of dissuading plaintiff
10 from assisting other inmates with their legal pursuits. Plaintiff included these issues when he
11 submitted another grievance against defendant Wilson on September 16, 2010. Plaintiff states that
12 the charges brought by defendant Wilson were ultimately dismissed for lack of an evidentiary basis.
13 Plaintiff alleges that his grievances against defendant Wilson were denied by defendant Burson, at
14 every level of the grievance procedure. Plaintiff alleges that defendant Wilson denied the grievances
15 to hide defendant Wilson's retaliation. Plaintiff alleges that the entire incident has made him
16 apprehensive about assisting other inmates with their legal pursuits. (Compl., at ¶¶ 41-63; pp. 11-
17 14).

18 **3. Third Issue**

19 As the third issue, plaintiff alleges that in late 2010, he filed a grievance concerning poor
20 living conditions in SDCC unit 4, where he was housed. On or about December 15, 2010,
21 defendants Burson, Howell, and Williams moved plaintiff from his two-man per cell housing into
22 dormitory style housing. Plaintiff asserts that this action was taken to silence plaintiff regarding his
23 concerns about unit 4 housing, because the conditions of the dormitory housing were unfavorable
24 when compared to plaintiff's prior housing in a two-man cell. Plaintiff submitted a grievance
25 regarding the alleged retaliatory move to dormitory housing, but the grievance was denied at every
26 level by defendants Burson, Williams, and Cox. Plaintiff alleges that on December 22, 2010, he

1 submitted another grievance, complaining about the unfavorable restroom conditions in the
2 dormitory housing. Plaintiff alleges that on December 29, 2010, defendants Burson, Howell, and
3 Williams made a classification recommendation that plaintiff be transferred out of the Southern
4 Desert Correctional Center (SDCC). Thereafter, on January 26, 2011, plaintiff was transferred from
5 SDCC to the Nevada State Prison (NSP). Plaintiff alleges that the transfer to NSP was made by
6 defendants Burson, Howell, and Williams in retaliation for the grievance writing activity and was
7 intended to silence plaintiff.

8 On February 11, 2011, plaintiff filed a grievance alleging that the transfer to NSP was
9 retaliatory. The grievance was denied at every level by defendants Burson, Williams, and Cox.
10 Plaintiff alleges that he was transferred back to SDCC on June 22, 2011, due to the NDOC's plans to
11 close NSP.

12 On November 11, 2012, plaintiff alleges that he submitted a grievance challenging certain
13 aspects of AR 722, the regulation governing law libraries within the NDOC. Plaintiff's grievance
14 was rejected by defendant Burson, and plaintiff appealed the decision. Plaintiff alleges that
15 defendants Burson and Williams then recommended to defendant Foster that he be charged with
16 abuse of the NDOC grievance procedure. Plaintiff asserts that defendants Burson and Williams
17 made the recommendation in retaliation for his grievance writing and appeal activity. Defendant
18 Foster then issued a notice of charges (NOC) against plaintiff, charging him with abuse of the
19 grievance procedure. Plaintiff asserts that defendant Foster charged him in a conspiracy with
20 defendants Burson and Williams to retaliate against plaintiff for his appeal of defendant Burson's
21 rejection of his earlier grievance, and to cease plaintiff's grievance writing activity. On January 19,
22 2012, correctional sergeant Torsky (who is not named as a defendant) conducted a disciplinary
23 hearing and found plaintiff guilty of abusing the grievance procedure. On January 19, 2012, plaintiff
24 appealed the guilty finding and also filed a grievance against defendant Foster for issuing a
25 retaliatory notice of charges.

26 On January 24, 2012, in plaintiff's absence, defendants Romero and Woodbury "ransacked"

1 his cell and submitted a NOC against plaintiff for theft of various items found in plaintiff's cell.
2 Plaintiff alleges that defendants Romero and Woodbury took these actions in retaliation against
3 plaintiff because plaintiff "wrote too many" grievances. Plaintiff alleges that following these
4 incidents, he discontinued filing grievances to avoid further acts of retaliation. (Compl., at ¶¶ 64-93;
5 pp.15-19).

6 **4. Fourth Issue**

7 Plaintiff alleges that in the late part of 2010, defendants Williams, Howell, Burson, Cox, and
8 Skolnik revised SDCC's law library operations policy in an unconstitutional manner to delay, hinder,
9 and discourage plaintiff and other prisoners from their legal pursuits. Plaintiff alleges that
10 defendants Dreesen, Connett, Foster, and Smith maintained the revised law library operations policy.
11 Plaintiff alleges that the revised SDCC law library operations policy includes: (1) reduction of law
12 library access from five days per week and five hours per day to two days per week and two and one
13 half hours per day; (2) the installation of a complex computer research system which cannot be fully
14 operated by the majority of SDCC prisoners; (3) only five legal research computers, one or more of
15 which is inoperable at times; (4) the removal of nearly all legal research books; (5) only twenty
16 prisoners are permitted in the library in a single two and one half hour time block; (6) prisoners are
17 limited to 30 minutes of computer legal research, unless no other prisoners are awaiting computer
18 research; (7) prisoners are only permitted access to the law library with those in their respective units
19 and are precluded from gaining legal assistance from prisoners in other units; (8) SDCC prisoners,
20 particularly those housed in segregated housing units are routinely deprived of sufficient legal
21 material and legal assistance. Plaintiff further complains that there is no training course to ensure
22 that SDCC legal assistants have sufficient legal training to effectively assist other prisoners in
23 submitting meaningful pleadings to the courts. (Compl., at ¶¶ 94-99; pp. 20-21).

24 **5. Fifth Issue**

25 Plaintiff alleges that defendant Burson, as the SDCC grievance coordinator, developed a
26 policy, practice, or custom of rejecting prisoners' attempts to appeal Burson's initial rejection of

1 grievances. (Compl., at ¶¶ 100-104; p. 22).

2 **6. Sixth Issue**

3 Plaintiff alleges that defendants Sandoval, Miller, and Cortez-Masto, as members of the
4 Nevada Board of Prison Commissioners, and defendants Skolnik and Cox, have deliberately failed to
5 ensure the proper training of defendants Graves, Griggs, Williams, Wilson, Burson, Howell,
6 Dreesen, Connett, Smith, Foster, Romero, and Woodbury as to: (1) proper use of the NDOC
7 grievance and disciplinary procedure; (2) the effective and proper operation of the SDCC law library;
8 and (3) the constitutional rights of plaintiff and NDOC prisoners with respect to prison conditions.
9 Plaintiff asserts that the failure of defendants to ensure proper training of correctional staff resulted
10 in the circumstances described in issues one through five. (Compl., at ¶¶ 105-106; p. 23).

11 **B. Defendants in Their Official Capacity**

12 Plaintiff sues defendants in their individual and official capacities. State officials sued in
13 their official capacity for damages are not persons for purposes of § 1983. *See Arizonans for Official*
14 *English v. Arizona*, 520 U.S. 43, 69 n.24 (1997); *Hafer v. Melo*, 502 U.S. 21, 27 (1991). Moreover,
15 the Eleventh Amendment bars damages actions against state officials in their official capacity. *See*
16 *Flint v. Dennison*, 488 F.3d 816, 824-25 (9th Cir. 2007); *Doe v. Lawrence Livermore Nat'l Lab.*, 131
17 F.3d 836, 839 (9th Cir. 1997). As such, plaintiff's claims for damages against all defendants in their
18 official capacity are dismissed from this action with prejudice.

19 **C. Count I**

20 Plaintiff incorporates into count I paragraphs 25-40 and 107 of the complaint, which appears
21 as the "first issue" in the "nature of the case" portion of the complaint. (Compl., at pp. 7-10). In
22 count I, plaintiff alleges that he was "denied and deprived of his right to assist other needy prisoners
23 in their legal pursuits under the First Amendment . . . by defendant Graves when he issued a false
24 notice of charges against plaintiff for allegedly charging legal fees to another prisoner as a pretext to
25 dissuade or compel plaintiff to cease his constitutionally-protected activity of assisting other needy
26

1 prisoners with their various legal pursuits.” (Compl., at p. 25).

2 “[A] prison inmate retains those First Amendment rights that are not inconsistent with his
3 status as a prisoner or with the legitimate penological objectives of the corrections system. *Pell v.*
4 *Procunier*, 417 U.S. 817, 822 (1974). A regulation that impinges on a prisoner’s First Amendment
5 rights “is valid if it is reasonably related to legitimate penological interests.” *Turner v. Safley*, 482
6 U.S. 78, 89 (1987) (regarding regulations on inmate-to-inmate communications). In determining
7 whether a prison is reasonably related to a legitimate penological interest, the court considers the
8 following *Turner* factors: (1) whether there is a valid rational connection between the regulation and
9 the interest used to justify the regulation; (2) whether prisoners retain alternative means of exercising
10 the right at issue; (3) the impact of the requested accommodation will on inmates, prison staff, and
11 prison resources generally; and (4) whether the prisoner has identified easy alternatives to the
12 regulation which could be implemented at a minimal cost to legitimate penological interests.
13 *Turner*, 482 U.S. at 89; *Beard v. Banks*, 548 U.S. 521, 528 (2006). Additionally, a prisoner’s right to
14 give legal assistance to other inmates deserves no more First Amendment protection than any other
15 form of prisoner speech. *Shaw v. Murphy*, 532 U.S. 223, 231-32 (2001).

16 “A prisoner suing prison officials under [§] 1983 for retaliation must allege that he was
17 retaliated against for exercising his constitutional rights and that the retaliatory action does not
18 advance legitimate penological goals, such as preserving institutional order and discipline.” *Barnett*
19 *v. Centoni*, 31 F.3d 813, 815-16 (9th Cir. 1994) (per curium); *see also Rizzo v. Dawson*, 778 F.2d
20 527, 532 (9th Cir. 1985). “[P]risoners have a First Amendment right to file prison grievances.”
21 *Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir. 2009). Retaliating against prisoners for exercising
22 the right to file prison grievances is itself a constitutional violation. *Id.* at 1269. The prisoner must
23 allege that his First Amendment rights were chilled or infringed by the alleged retaliatory action. *See*
24 *Resnick v. Hayes*, 213 F.3d 443, 449 (9th Cir. 2000); *see also Brodheim v. Cry*, 584 F.3d 1262, 1271
25 (9th Cir. 2009).

26 In the instant case, plaintiff has alleged that defendant Graves was familiar with plaintiff’s

1 constitutionally-protected activity of assisting other inmates with their legal filings. Plaintiff has
 2 alleged that in retaliation for plaintiff engaging in constitutionally protected activity, defendant
 3 Graves filed a false disciplinary charge against plaintiff. Plaintiff has further alleged that his First
 4 Amendment rights were chilled, insofar as plaintiff was apprehensive about continuing to assist
 5 other inmates with their legal claims. (Compl., at ¶¶ 25-28; pp. 7-8). The complaint states a
 6 colorable First Amendment retaliation claim against defendant Graves. Count I shall proceed against
 7 defendant Graves.

8 **D. Count II**

9 Plaintiff incorporates into count II paragraphs 25-40 and 107 of the complaint, which appears
 10 as the “first issue” in the “nature of the case” portion of the complaint. (Compl., at pp. 7-10).
 11 Plaintiff alleges that he was “denied and deprived of his right to due process under the Fourteenth
 12 Amendment . . . by defendant Griggs when he found plaintiff guilty of charging another prisoner
 13 legal fees despite the complete lack of facts and evidence presented to plaintiff to substantiate such a
 14 charge and to allow plaintiff the opportunity to present any type of defense against the charge,
 15 including the calling of witnesses.” (Compl., at p. 27).

16 In order to state a cause of action for deprivation of procedural due process, a plaintiff must
 17 first establish the existence of a liberty interest for which the protection is sought. In *Sandin v.*
 18 *Connor*, 515 U.S. 472, 487 (1995), the Supreme Court abandoned earlier case law which had held
 19 that states created protectable liberty interests by way of mandatory language in prison regulations.
 20 *Id.* Instead, the Court adopted an approach in which the existence of a liberty interest is determined
 21 by focusing on the nature of the deprivation. *Id.* In doing so, the Court held that liberty interests
 22 created by prison regulations are limited to freedom from restraint which “imposes atypical and
 23 significant hardship on the inmate in relation to the ordinary incidents of prison life.” *Id.* at 484.

24 A prisoner has a liberty interest when confinement imposes an “atypical and significant
 25 hardship . . . in relation to the ordinary incidents of prison life.” *Sandin*, 515 U.S. at 484. In *Sandin*,
 26 the Court focused on three factors in determining that plaintiff possessed no liberty interest in

1 avoiding disciplinary segregation: (1) disciplinary segregation was essentially the same as
2 discretionary forms of segregation; (2) a comparison between the plaintiff's confinement and
3 conditions in the general population showed that the plaintiff suffered no "major disruption in his
4 environment;" and (3) the length of the plaintiff's sentence was not affected. *Sandin*, 515 U.S. at
5 486-87.

6 Where a protected liberty interest exists, the Supreme Court has set out the following
7 procedural due process requirements for disciplinary detention of a prisoner: (1) written notice of the
8 charges; (2) at least 24 hours between the time the prisoner receives written notice and the time of
9 the hearing, so that the prisoner may prepare his defense; (3) a written statement by the fact finders
10 of the evidence they rely on and reasons for taking disciplinary action; (4) the right of the prisoner to
11 call witnesses in his defense, when permitting him to do so would not be unduly hazardous to
12 institutional safety or correctional goals; (5) legal assistance to the prisoner where the prisoner is
13 illiterate or the issues presented are legally complex. *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974).
14 In addition, "the requirements of due process are satisfied if some evidence supports the decision by
15 the disciplinary board" *Superintendent, Mass. Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 454
16 (1985).

17 In the instant case, plaintiff has alleged that he spent 120 days in disciplinary segregation as a
18 result of the disciplinary finding of guilt. Defendant Griggs was the hearing officer at the
19 disciplinary hearing, which was held on March 23, 2010. Plaintiff was found guilty of charging for
20 providing legal services to other inmates. Plaintiff alleges that defendant Griggs denied him
21 procedural safeguards prior to the disciplinary hearing, including the denial of his right to present
22 witnesses in his defense. Plaintiff also alleges that defendant Griggs found him guilty of the
23 disciplinary charges based on the false report of correctional staff, without sufficient evidence.
24 Plaintiff's complaint contains a detailed description of how disciplinary segregation housing differed
25 from general population housing, posing an atypical and significant hardship on him in relation to
26 the ordinary incidents of prison life. Plaintiff alleges material differences between the conditions in

1 general population versus the conditions in disciplinary segregation. These conditions include: (1)
2 birds flying throughout the unit dropping feces; (2) cold and inadequate meals; (3) deprivation of
3 store privileges to purchase supplement food items, resulting in an unbalanced diet, hunger, and
4 substantial weight loss; (4) insect infested cell; (5) no cleaning supplies to clean his cell; (6) reduced
5 phone time and reduced time out of his cell; and (7) insufficient water during outside recreation; (8)
6 deprivation of his personal appliances and electricity to his cell; and (9) cold showers. (Compl., at
7 ¶¶ 38-39; pp. 9-10). The court construes plaintiff's allegation of 120 days in disciplinary housing as
8 a sufficient allegation of an "atypical and significant hardship . . . in relation to the ordinary incidents
9 of prison life." *See Sandin*, 515 U.S. at 484; *see also Serrano v. Francis*, 345 F.3d 1071, 1078 (9th
10 Cir. 2003); *Ramirez v. Gomez*, 334 F.3d 850, 861 (9th Cir. 2003). Based on these allegations,
11 plaintiff states a colorable claim against defendant Griggs for due process violations in connection
12 with the disciplinary hearing. *See Wolff v. McDonnell*, 418 U.S. at 556; *Superintendent v. Hill*, 472
13 U.S. at 454. Count II shall proceed as to defendant Griggs.

14 **E. Count III**

15 Plaintiff incorporates into count III paragraphs 25-40 and 107 of the complaint, which
16 appears as the "first issue" in the "nature of the case" portion of the complaint. (Compl., at pp. 7-
17 10). Plaintiff alleges that he was "denied and deprived of his right to assist other needy prisoners
18 in their legal pursuits under the First Amendment . . . by defendants Graves, Griggs, Williams, and
19 Cox when they initiated, found plaintiff guilty of, and maintained a false disciplinary charge of
20 charging for legal fees against plaintiff in a conspiracy to dissuade and/or compel plaintiff to cease
21 assisting other needy prisoners with their legal pursuits." (Compl., at p. 28). Plaintiff has alleged
22 that defendant Graves wrote a false charge against him, accusing him of charging for legal services.
23 Defendant Griggs found plaintiff guilty of this charge, without sufficient evidence and denying
24 plaintiff procedural safeguards at the hearing. This resulted in plaintiff's confinement in disciplinary
25 segregation for 120 days. Defendants Williams and Cox denied plaintiff's appeal of the disciplinary
26 finding of guilt. Plaintiff has alleged that defendants acted in concert to prevent him from assisting

1 other inmates with legal filings. Plaintiff has alleged sufficient facts to state a colorable First
 2 Amendment claim against defendants Graves, Griggs, Williams, and Cox. *See Turner v. Safley*, 482
 3 U.S. 78, 89 (1987); *Pell v. Procunier*, 417 U.S. 817, 822 (1974). Count III shall proceed against
 4 defendants Graves, Griggs, Williams, and Cox.

5 **F. Count IV**

6 Plaintiff incorporates into count IV paragraphs 41-63 and 107 of the complaint, which
 7 appears as the “second issue” in the “nature of the case” portion of the complaint. (Compl., at pp.
 8 11-14). Plaintiff alleges that he was “denied and deprived his right to file prison grievances and to
 9 assist other needy prisoners with their legal pursuits under the First Amendment of the United States
 10 Constitution . . . by defendant Wilson when he initiated a false NOC [notice of charges] against
 11 plaintiff for allegedly charging legal fees and unauthorized contact in retaliation for plaintiff’s verbal
 12 notice to file a grievance against him as a means to dissuade or compel plaintiff to cease his activity
 13 of assisting other needy prisoners with their legal pursuits.” (Compl., at p. 30).

14 “A prisoner suing prison officials under [§] 1983 for retaliation must allege that he was
 15 retaliated against for exercising his constitutional rights and that the retaliatory action does not
 16 advance legitimate penological goals, such as preserving institutional order and discipline.” *Barnett*
 17 *v. Centoni*, 31 F.3d 813, 815-16 (9th Cir. 1994) (per curium); *see also Rizzo v. Dawson*, 778 F.2d
 18 527, 532 (9th Cir. 1985). “[P]risoners have a First Amendment right to file prison grievances.”
 19 *Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir. 2009). Retaliating against prisoners for exercising
 20 the right to file prison grievances is itself a constitutional violation. *Id.* at 1269. The prisoner must
 21 allege that his First Amendment rights were chilled or infringed by the alleged retaliatory action. *See*
 22 *Resnick v. Hayes*, 213 F.3d 443, 449 (9th Cir. 2000); *see also Brodheim v. Cry*, 584 F.3d 1262, 1271
 23 (9th Cir. 2009).

24 In the instant case, plaintiff has alleged that defendant Wilson was aware of plaintiff’s
 25 constitutionally-protected activity of assisting other inmates with their legal filings. Plaintiff has
 26 alleged that in retaliation for plaintiff engaging in this constitutionally-protected activity, defendant

1 Wilson filed a false disciplinary charge against plaintiff. Plaintiff has further alleged that his First
2 Amendment rights were chilled, insofar as plaintiff was apprehensive about continuing to assist
3 other inmates with their legal claims. (Compl., at ¶¶ 41-63; pp. 11-14). The complaint states a
4 colorable First Amendment retaliation claim against defendant Wilson. Count IV shall proceed
5 against defendant Wilson.

6 **G. Count V**

7 Plaintiff incorporates into count V paragraphs 41-63 and 107 of the complaint, which appears
8 as the “second issue” in the “nature of the case” portion of the complaint. (Compl., at pp. 11-14).
9 Plaintiff alleges that he was “denied and deprived of his right to seek redress of his grievances under
10 the First Amendment . . . by defendant Burson when she deliberately blocked plaintiff’s attempts to
11 appeal her grievance rejection decisions to her superiors for the express purpose of preventing
12 plaintiff from seeking redress of his grievance against defendant Wilson.” (Compl., at p. 31).

13 Plaintiff has alleged that he filed a grievance against defendant Wilson for retaliating against
14 him by bringing false charges against him. Plaintiff alleges that his grievance was denied. Plaintiff
15 further alleges that defendant Burson rejected his grievances at every level of the grievance
16 procedure, “as a means of preventing plaintiff from seeking redress of plaintiff’s grievances past
17 Burson’s very own authority, and as a means of concealing the retaliatory conduct of defendant
18 Wilson” (Compl., at ¶¶ 62-63; pp. 13-14). Plaintiff alleges that defendant Burson was aware of
19 his grievance-writing activity. “[P]risoners have a First Amendment right to file prison grievances.”
20 *Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir. 2009). Retaliating against prisoners for exercising
21 the right to file prison grievances is itself a constitutional violation. *Id.* at 1269. Plaintiff has alleged
22 sufficient facts to state a colorable claim against defendant Burson for retaliation in violation of the
23 First Amendment. Count V shall proceed against defendant Burson.

24 **H. Count VI**

25 Plaintiff incorporates into count VI paragraphs 64-76 and 107 of the complaint, which
26 appears as the “third issue” in the “nature of the case” portion of the complaint. (Compl., at pp. 15-

16). Plaintiff alleges that he was “denied and deprived of his right to file prison grievances under the First Amendment . . . by defendant Burson, Howell, and Williams when they had plaintiff moved to a dormitory housing unit from his two-man cell and had plaintiff transferred to another institution in retaliation for his constitutionally-protected grievance writing activity thereby chilling plaintiff’s First Amendment rights. Plaintiff alleges that defendant Cox violated his rights, conspiring with defendants Burson, Howell, and Williams, in refusing to reverse their retaliatory actions” (Compl., at p. 32).

In the instant case, plaintiff has alleged that he filed a grievance regarding poor living conditions in unit 4. Plaintiff alleges that shortly after he filed his grievance, defendants Burson, Howell, and Williams moved him to dormitory housing where the conditions were much less favorable than his previous housing in a two-man cell within unit 4. Defendants Burson, Howell, and Williams then made the decision to transfer plaintiff to another prison. Plaintiff has alleged that defendants Burson, Howell, and Williams’ decision to move him to the dormitory housing and to transfer him to another prison was in retaliation for plaintiff engaging in constitutionally protected activity of filing a grievance regarding the conditions of unit 4 housing. Plaintiff further alleges that defendant Cox conspired with defendants Burson, Howell, and Williams to retaliate against him and chill his constitutionally-protected right to file inmate grievances. (Compl., at ¶¶ 64-76; pp. 15-16).

“[P]risoners have a First Amendment right to file prison grievances.” *Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir. 2009). Retaliating against prisoners for exercising the right to file prison grievances is itself a constitutional violation. *Id.* at 1269. Plaintiff has alleged sufficient facts to state a colorable First Amendment retaliation claim against defendants Burson, Howell, Williams, and Cox. Count VI shall proceed against defendants Burson, Howell, Williams, and Cox.

I. Count VII

Plaintiff incorporates into count VII paragraphs 77-86 and 107 of the complaint, which appears as the “third issue” in the “nature of the case” portion of the complaint. (Compl., at pp. 16-18). Plaintiff alleges that he was “denied and deprived of his right to file prison grievances under the

1 First Amendment . . . by defendants Burson, Williams, and Foster when they brought false abuse of
2 grievance procedure charges against plaintiff, in retaliation for his grievance-writing activity and
3 appeal of defendant Burson's informal grievance rejection decision, thereby chilling plaintiff's First
4 Amendment rights." (Compl., at p. 34).

5 Plaintiff alleges that on November 11, 2012, he submitted a grievance challenging certain
6 aspects of AR 722, the regulation governing law libraries within the NDOC. Plaintiff's grievance
7 was rejected by defendant Burson, and plaintiff appealed the decision. Plaintiff alleges that
8 defendants Burson and Williams then recommended to defendant Foster that he be charged with
9 abuse of the NDOC grievance procedure. Plaintiff asserts that defendants Burson and Williams
10 made the recommendation in retaliation for his grievance writing and appeal activity. Defendant
11 Foster then issued a notice of charges (NOC) against plaintiff, charging him with abuse of the
12 grievance procedure. Plaintiff asserts that defendant Foster charged him as part of a conspiracy with
13 defendants Burson and Williams to retaliate against plaintiff for his appeal of defendant Burson's
14 rejection of his earlier grievance, and to cease plaintiff's grievance writing activity. On January 19,
15 2012, correctional sergeant Torsky (who is not named as a defendant) conducted a disciplinary
16 hearing and found plaintiff guilty of abusing the grievance procedure. On January 19, 2012, plaintiff
17 appealed the guilty finding and also filed a grievance against defendant Foster for issuing a
18 retaliatory notice of charges. (Compl., at ¶¶ 77-86; pp. 16-18).

19 "[P]risoners have a First Amendment right to file prison grievances." *Brodheim v. Cry*, 584
20 F.3d 1262, 1269 (9th Cir. 2009). Retaliating against prisoners for exercising the right to file prison
21 grievances is itself a constitutional violation. *Id.* at 1269. Plaintiff has alleged sufficient facts to
22 state a colorable claim against defendants Burson, Williams, and Foster for retaliation in violation of
23 the First Amendment. Count VII shall proceed against defendants Burson, Williams, and Foster.

24 **J. Count VIII**

25 Plaintiff incorporates into count VIII paragraphs 87-93 and 107 of the complaint, which
26 appears as the "third issue" in the "nature of the case" portion of the complaint. (Compl., at pp. 18-

19). Plaintiff alleges that he was “denied and deprived of his right to file prison grievances under the First Amendment . . . by defendants Romero and Woodbury, when they ransacked plaintiff’s cell and issued plaintiff a false NOC [notice of charges] for theft in retaliation for plaintiff’s constitutionally protected grievance writing activity, thereby chilling plaintiff’s First Amendment rights.” (Compl., at p. 35).

Plaintiff alleges that on January 24, 2012, defendants Romero and Woodbury “ransacked” his cell and submitted a NOC against plaintiff for theft of various items found in plaintiff’s cell. Plaintiff alleges that defendants Romero and Woodbury took these actions in retaliation against plaintiff because plaintiff “wrote too many” grievances. Plaintiff alleges that following this incident, he discontinued filing grievances to avoid further acts of retaliation. (Compl., at ¶¶ 87-93; pp.18-19). Plaintiff has alleged sufficient facts to state a colorable claim against defendants Romero and Woodbury for retaliation in violation of the First Amendment. ” *Brodheim v. Cry*, 584 F.3d 1262, 1269. Count VIII shall proceed against defendants Romero and Woodbury.

K. Count IX

Plaintiff incorporates into count IX paragraphs 94-99 and 107 of the complaint, which appears as the “fourth issue” in the “nature of the case” portion of the complaint. (Compl., at pp. 20-21). Plaintiff alleges that he was “denied and deprived of his right to a constitutionally adequate law library by defendants Burson, Williams, Howell, Cox, Skolnik, Dreesen, Connett, Foster, and Smith, when they revised and maintained SDCC law library operations and procedure in a manner designed to expressly hinder and frustrate plaintiff and other SDCC prisoners in their legal pursuits. (Compl., at p. 36).

Plaintiff alleges that in the late part of 2010, defendants Williams, Howell, Burson, Cox, and Skolnik revised SDCC’s law library operations policy in an unconstitutional manner to delay, hinder, and discourage plaintiff and other prisoners from their legal pursuits. Plaintiff alleges that defendants Dreesen, Connett, Foster, and Smith maintained the revised law library operations policy. Plaintiff alleges that the revised SDCC law library operations policy includes: (1) reduction of law

1 library access from five days per week and five hours per day to two days per week and two and one
2 half hours per day; (2) the installation of a complex computer research system which cannot be fully
3 operated by the majority of SDCC prisoners; (3) only five legal research computers, one or more of
4 which is inoperable at times; (4) the removal of nearly all legal research books; (5) only twenty
5 prisoners are permitted in the library in a single two and one half hour time block; (6) prisoners are
6 limited to 30 minutes of computer legal research, unless no other prisoners are awaiting computer
7 research; (7) prisoners are only permitted access to the law library with those in their respective units
8 and are precluded from gaining legal assistance from prisoners in other units; (8) SDCC prisoners,
9 particularly those housed in segregated housing units are routinely deprived of sufficient legal
10 material and legal assistance. Plaintiff further complains that there is no training course to ensure
11 that SDCC legal assistants have sufficient legal training to effectively assist other prisoners in
12 submitting meaningful pleadings to the courts. (Compl., at ¶¶ 94-99; pp. 20-21).

13 Prisoners have a constitutional right of access to the courts that arises under the Due Process
14 Clause of the Fourteenth Amendment. *Lewis v. Casey*, 518 U.S. 343, 346 (1996). A prisoner
15 alleging a violation of his right of access to the courts must have suffered “actual injury.” *Id.* at 349-
16 50. The right to access the courts is limited to direct criminal appeals, habeas corpus proceedings,
17 and civil rights actions challenging conditions of confinement. *Id.* at 354-55. “An inmate cannot
18 establish relevant actual injury simply by establishing that his prison’s law library or legal assistance
19 program is sub-par in some theoretical sense.” *Id.* at 351. Rather, the inmate “must go one step
20 further and demonstrate that the library or legal assistance program hindered his efforts to pursue a
21 legal claim.” *Id.* The actual-injury requirement mandates that an inmate “demonstrate that a
22 nonfrivolous legal claim had been frustrated or was being impeded.” *Id.* at 353. In *Lewis v. Casey*,
23 the Supreme Court defined prisoners’ right of access to the courts as simply the “right to bring to
24 court a grievance.” *Id.* at 354.

25 In the instant case, plaintiff has merely alleged that the law library at SDCC is substandard
26 and that the new regulations are not to his liking. This does not state a cognizable claim for denial of

1 access to the courts. Plaintiff has not alleged that defendants have hindered his efforts to pursue a
 2 nonfrivolous legal claim regarding a direct criminal appeal, habeas corpus proceedings, or civil
 3 rights actions challenging conditions of confinement. As such, plaintiff has failed to allege actual
 4 injury. Plaintiff fails to state a claim for denial of access to the courts. Because this deficiency
 5 cannot be cured through further amendment, count IX is dismissed with prejudice.

6 **L. Count X**

7 Plaintiff incorporates into count X paragraphs 100-104 and 107 of the complaint, which
 8 appears as the “fifth issue” in the “nature of the case” portion of the complaint. (Compl., at p. 22).
 9 Plaintiff alleges that he was “denied and deprived of his right to file and seek redress of his grievance
 10 under the First Amendment of the United States Constitution . . . by defendant Burson when she
 11 continuously impeded and halted plaintiff’s attempts to appeal a number of grievance rejection
 12 decisions to higher levels of review through established NDOC grievance procedure” (Compl.,
 13 at p. 37). Plaintiff alleges that defendant Burson, as the SDCC grievance coordinator, has developed
 14 a policy, practice, or custom of rejecting prisoners’ attempts to appeal Burson’s initial rejection of
 15 grievances. (Compl., at ¶¶ 100-104; p. 22). Plaintiff’s allegations are sufficient to state a colorable
 16 claim against defendant Burson for violation of plaintiff’s First Amendment rights. *See Brodheim v.*
 17 *Cry*, 584 F.3d at 1269. Count X shall proceed against defendant Burson.

18 **M. Count XI**

19 Plaintiff incorporates into count XI paragraphs 105-106 and 107 of the complaint, which
 20 appears as the “sixth issue” in the “nature of the case” portion of the complaint. (Compl., at p. 23).
 21 Plaintiff alleges that he was “denied and deprived of his right to assist other needy prisoners in their
 22 legal pursuits, his right to file and seek redress of his grievances, and his right to adequate law library
 23 operations under the First Amendment. (Compl., at p. 38). Plaintiff further alleges that defendants
 24 Sandoval, Miller, and Cortez-Masto, as members of the Nevada Board of Prison Commissioners,
 25 and defendants Skolnik and Cox, deliberately failed to ensure the proper training of defendants
 26 Graves, Griggs, Williams, Wilson, Burson, Howell, Dreesen, Connett, Smith, Foster, Romero, and

1 Woodbury as to: (1) the proper use of the NDOC disciplinary and grievance procedures and
2 purposes; (2) the effective operation of the SDCC law library; and (3) the constitutional rights of
3 plaintiff and NDOC prisoners in general with respect to prison conditions.” (*Id.*).

4 Supervisory personnel are generally not liable under section 1983 for the actions of their
5 employees under a theory of *respondeat superior* and, therefore, when a named defendant holds a
6 supervisory position, the causal link between him and the claimed constitutional violation must be
7 specifically alleged. See *Fayle v. Stapley*, 607 F.2d 858, 862 (9th Cir. 1979); *Mosher v. Saalfeld*,
8 589 F.2d 438, 441 (9th Cir. 1978), *cert. denied*, 442 U.S. 941 (1979). A plaintiff can establish the
9 necessary causal connection for supervisory liability by alleging that the defendant “set[] in motion a
10 series of acts by others” or “knowingly refus[ed] to terminate a series of acts by others, which the
11 supervisor knew or reasonably should have known would cause others to inflict a constitutional
12 injury.” *Starr v. Baca*, 652 F.3d 1202, 1207-08 (9th Cir. 2011) (internal quotations, original
13 alterations, and citations omitted). Thus, “[a] supervisor can be liable in his individual capacity for
14 his own culpable action or inaction in the training, supervision, or control of his subordinates; for his
15 acquiescence in the constitutional deprivation; or for conduct that showed a reckless or callous
16 indifference to the rights of others.” *Id.* at 1208 (quoting *Watkins v. City of Oakland*, 145 F.3d
17 1087, 1093 (9th Cir. 1998)); see also *Larez v. City of Los Angeles*, 946 F.2d 630, 645 (9th Cir.
18 1991).

19 Although the United States Supreme Court has rejected the idea that “knowledge and
20 acquiescence” of subordinates’ conduct is enough to hold supervisory officials liable under section
21 1983 where the a claim is one of purposeful and unlawful discrimination, *Ashcroft v. Iqbal*, 556 U.S.
22 662, 677-684 (2009), the Ninth Circuit Court of Appeals has held that where the applicable
23 constitutional standard is deliberate indifference, “a plaintiff may state a claim against a supervisory
24 for deliberate indifference based upon the supervisor’s knowledge of and acquiescence in
25 unconstitutional conduct by his or her subordinates.” *Starr*, 652 F.3d at 1205. “Even under a
26 deliberate indifference theory of individual liability, the [p]laintiffs must still allege sufficient facts

1 to plausibly establish the defendant's 'knowledge of' and 'acquiescence in' the unconstitutional
2 conduct of his subordinates." *Hydrick v. Hunter*, 669 F.3d 937, 942 (9th Cir. 2012) (citing *Star v.*
3 *Baca*, 652 F.3d at 1206-07).

4 In the instant case, plaintiff has alleged sufficient facts to plausibly establish that defendants
5 Skolnik and Cox had knowledge of the improper use of the NDOC disciplinary and grievance
6 procedures and purposes, and failed to train defendants Graves, Griggs, Williams, Wilson, Burson,
7 Howell, Dreesen, Connett, Smith, Foster, Romero, and Woodbury. However, plaintiff has failed to
8 allege facts to state a colorable claim against defendants Skolnik and Cox for failure to train their
9 subordinates in "the effective operation of the SDCC law library" and "the constitutional rights of
10 plaintiff and NDOC prisoners in general with respect to prison conditions." The claim against
11 defendants Skolnik and Cox for failure to train their subordinates in the use of the NDOC
12 disciplinary and grievance procedures may proceed.

13 However, there is no indication from the facts alleged that defendants Sandoval, Miller, and
14 Cortez-Masto, as members of the Nevada Board of Prison Commissioners, had the requisite level of
15 knowledge, participation, or acquiescence in the alleged failure to train correctional staff. Plaintiff
16 fails to state a claim against defendants Sandoval, Miller, and Cortez-Masto, and further amendment
17 would be futile. As such, defendants Sandoval, Miller, and Cortez-Masto are dismissed from this
18 action with prejudice.

19 **N. Claims in Supplement (ECF No. 6, at pp. 4-8)**

20 As discussed earlier in this order, attached to plaintiff's motion to supplement is plaintiff's
21 affidavit (ECF No. 6, at pp. 4-8), containing plaintiff's allegations against two new defendants,
22 correctional officers J. Meranza and R. Hill. The court construes plaintiff's affidavit as a supplement
23 to the complaint and reviews the claims within it under the same screening standard as the
24 complaint.

25 Plaintiff alleges that on December 4, 1012, defendants Meranza and Hill searched his cell and
26 took items of property, including one pillow, magazines, and a bottle of antacid medication. Plaintiff

1 alleges that defendants Meranza and Hill conducted the cell search and took his property in
2 retaliation for plaintiff having assisted another inmate prepare a grievance against correctional staff
3 the day prior to the cell search. (ECF No. 6, at pp. 4-6).

4 “A prisoner suing prison officials under [§] 1983 for retaliation must allege that he was
5 retaliated against for exercising his constitutional rights and that the retaliatory action does not
6 advance legitimate penological goals, such as preserving institutional order and discipline.” *Barnett*
7 *v. Centoni*, 31 F.3d 813, 815-16 (9th Cir. 1994) (per curium); *see also Rizzo v. Dawson*, 778 F.2d
8 527, 532 (9th Cir. 1985). “[P]risoners have a First Amendment right to file prison grievances.”
9 *Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir. 2009). Retaliating against prisoners for exercising
10 the right to file prison grievances is itself a constitutional violation. *Id.* at 1269. The prisoner must
11 allege that his First Amendment rights were chilled or infringed by the alleged retaliatory action. *See*
12 *Resnick v. Hayes*, 213 F.3d 443, 449

13 Plaintiff has alleged that defendants Meranza and Hill were aware of plaintiff’s
14 constitutionally-protected activity of assisting another inmate with filing a grievance. Plaintiff has
15 alleged that in retaliation for plaintiff engaging in constitutionally protected activity, defendants
16 conducted a needless search of his cell and wrongly confiscated items of his property. Plaintiff has
17 further alleged that his First Amendment rights were chilled, insofar as plaintiff was apprehensive
18 about continuing to assist other inmates with grievances. Plaintiff states a colorable First
19 Amendment retaliation claim against defendants J. Meranza and R. Hill.

20 **V. Conclusion**

21 **IT IS THEREFORE ORDERED** that plaintiff’s applications to proceed *in forma pauperis*
22 (ECF Nos. 1, 2, 4, 5) without having to prepay the full filing fee are **GRANTED**. Plaintiff shall **not**
23 be required to pay an initial installment fee. Nevertheless, the full filing fee shall still be due,
24 pursuant to 28 U.S.C. § 1915, as amended by the Prisoner Litigation Reform Act of 1996. The
25 movant herein is permitted to maintain this action to conclusion without the necessity of prepayment
26 of fees or costs or the giving of security therefor. This order granting *in forma pauperis* status shall

1 not extend to the issuance of subpoenas at government expense.

2 **IT IS FURTHER ORDERED** that, pursuant to 28 U.S.C. § 1915, as amended by the
3 Prisoner Litigation Reform Act of 1996, the Nevada Department of Corrections shall pay to the clerk
4 of the United States District Court, District of Nevada, 20% of the preceding month's deposits to the
5 account of Curtis L. Downing, inmate number 18675, (in months that the account exceeds \$10.00)
6 until the full \$350 filing fee has been paid for this action. The clerk shall send a copy of this order to
7 the attention of **Albert G. Peralta, Chief of Inmate Services for the Nevada Department of**
8 **Prisons**, P.O. Box 7011, Carson City, NV 89702.

9 **IT IS FURTHER ORDERED** that, even if this action is dismissed, or is otherwise
10 unsuccessful, the full filing fee shall still be due, pursuant to 28 U.S.C. §1915, as amended by the
11 Prisoner Litigation Reform Act of 1996.

12 **IT IS FURTHER ORDERED** that plaintiff's motion for a status check (ECF No. 3) is
13 **DENIED** as moot.

14 **IT IS FURTHER ORDERED** that plaintiff's motion to supplement his civil rights
15 complaint (ECF No. 6) is **GRANTED**, to the extent that the court **CONSTRUES** plaintiff's sworn
16 affidavit (ECF No. 6, at pp. 4-8) containing allegations against defendants J. Meranza and R. Hill, as
17 the supplement to the complaint. The clerk of court **SHALL DETATCH AND FILE** plaintiff's
18 affidavit (ECF No. 6, at pp. 4-8), docketing the same as the supplement to the complaint.

19 **IT IS FURTHER ORDERED** that plaintiff's claims for damages against all defendants in
20 their **official capacity** are **DISMISSED WITH PREJUDICE** from this action.

21 **IT IS FURTHER ORDERED** that plaintiff's First Amendment retaliation claim in count I
22 against defendant Graves states a colorable claim and **SHALL PROCEED**.

23 **IT IS FURTHER ORDERED** that plaintiff's due process claim in count II against
24 defendant Griggs states a colorable claim and **SHALL PROCEED**.

25 **IT IS FURTHER ORDERED** that plaintiff claim of violation of his First Amendment
26 rights in count III states a colorable claim and **SHALL PROCEED** against defendants Graves,

1 Griggs, Williams, and Cox.

2 **IT IS FURTHER ORDERED** that plaintiff's First Amendment retaliation claim in count IV
3 against defendant Wilson states a colorable claim and **SHALL PROCEED**.

4 **IT IS FURTHER ORDERED** that plaintiff's First Amendment retaliation claim in count V
5 against defendant Burson states a colorable claim and **SHALL PROCEED**.

6 **IT IS FURTHER ORDERED** that plaintiff's First Amendment retaliation claim in count VI
7 states a colorable claim and **SHALL PROCEED** against defendants Burson, Howell, Williams, and
8 Cox.

9 **IT IS FURTHER ORDERED** that plaintiff's First Amendment retaliation claim in count
10 VII states a colorable claim and **SHALL PROCEED** against defendants Burson, Williams, and
11 Foster.

12 **IT IS FURTHER ORDERED** that plaintiff's First Amendment retaliation claim in count
13 VIII states a colorable claim and **SHALL PROCEED** against defendants Romero and Woodbury.

14 **IT IS FURTHER ORDERED** that count IX, plaintiff's access to the courts claim, is
15 **DISMISSED WITH PREJUDICE**, as amendment would be futile.

16 **IT IS FURTHER ORDERED** that plaintiff's First Amendment claim in count X against
17 defendant Burson states a colorable claim and **SHALL PROCEED**.

18 **IT IS FURTHER ORDERED** that plaintiff's claim in count XI against defendants Skolnik
19 and Cox for failure to train their subordinates in the use of the NDOC disciplinary and grievance
20 procedures **SHALL PROCEED**.


21 **IT IS FURTHER ORDERED** that plaintiff's claim in count XI against defendants Skolnik
22 and Cox for failure to train their subordinates in "the effective operation of the SDCC law library"
23 and "the constitutional rights of plaintiff and NDOC prisoners in general with respect to prison
24 conditions" is **DISMISSED WITH PREJUDICE**.

25 **IT IS FURTHER ORDERED** that plaintiff's claim in count XI against defendants
26 Sandoval, Miller, and Cortez-Masto for failure to train their subordinates is **DISMISSED WITH**

1 **PREJUDICE.** Defendants Sandoval, Miller, and Cortez-Masto are **DISMISSED** from this action
2 **WITH PREJUDICE.**

3 **IT IS FURTHER ORDERED** that plaintiff's First Amendment retaliation claim against
4 defendants J. Meranza and R. Hill, in the supplement (ECF No. 6, at pp. 4-8), states a colorable
5 claim and **SHALL PROCEED.**

6 Dated this 31st day of January, 2013.

7
8 
9 UNITED STATES DISTRICT JUDGE